Appendix to Petition

DOCUMENTS USED IN EFFECTING CONSOLIDATION.

Consolidation Agreement.

Drawn for execution by both banks. Herbert Fleishhacker and Mortimer Fleishhacker signed as presidents of their respective banks. (R. 57.) The directors of both institutions also executed same. (R. 57-58.)

Fraudulent Letter to Stockholders.

A standard letter describing the plan was prepared for the stockholders of both banks. Except as to names and signatures, these letters are identical. Mortimer Fleishhacker addressed such a letter to the shareholders of his bank (R. 60); Herbert Fleishhacker was involved in similar conduct. (Buck R. 62.)

Form Letter for Surrender of Certificates and Waiver of Rights in Advance.

This document was sent to stockholders of both banks. Substantially identical forms were used. (R. 63; Buck R. 65.)

Proxy to Vote in Favor of Plan.

In the case at bar there was a standard form of proxy running in favor of Mortimer Fleishhacker. (R. 65-66.) The proxy for Herbert Fleishhacker's Bank ran in favor of dummies. Both forms were identical. (R. 65; Buck R. 66.)

Part II.

Federal Statute Concerning Publication of Condition Reports. (12 USCA 161.)

"Every association shall make to the Comptroller of the Currency not less than three reports during each year, according to the form which may be prescribed by him, *verified by the oath or affirmation of the president, or of the cashier,* or of a vice-president, or of an assistant cashier of the association *designated by its board of directors* to verify such reports in the absence of the president and cashier, taken before a notary public . . . and *attested by the signature of at least three of the directors.*

"Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified, and shall be transmitted to the Comptroller. . . .

". . . *shall be published in a newspaper* published in the place where such association is established. . . ."

All member banks of the Federal Reserve System are required to comply with the above. See 12 USCA 324.

The Anglo & London Paris National Bank was a national bank at the time of the merger, and as such, was required to publish such reports pursuant to 12 USCA 161, which was part of the National Bank Act.

Directors' liability for publication of untrue condition reports arises under 12 USCA 93, which creates general liability for a violation of any provision of that Act.

Part III.

Questions Concerning Merits of Petitioner's Claim.

This appeal is concerned with original jurisdiction of the District Court. In seeking reversal, petitioner may be required to rebut any adverse inference regarding the merits of his claim. The duty to make that showing would arise from the necessity of showing that the judgment is in fact erroneous. In the lower Courts respondents made two contentions that may require comment.

Presumption Concerning Knowledge of Law. It will not be presumed, as a fact, that Denicke had knowledge of his legal rights, when actually he did not have such knowledge.

Statute of Limitations. The statute did not commence to run as against these claims until actual knowledge, because the conduct charged was in the nature of a fraud. Local law is to that effect.

These subjects are discussed at page 16 of Appendix to Petition filed in the *Buck* case. In the interest of brevity, we adopt that statement herein.